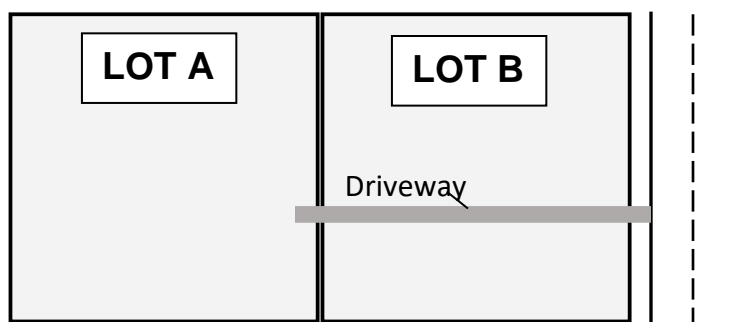


UNIFORM LAW COMMISSION
New Acts 2020: Summaries

Uniform Easement Relocation Act

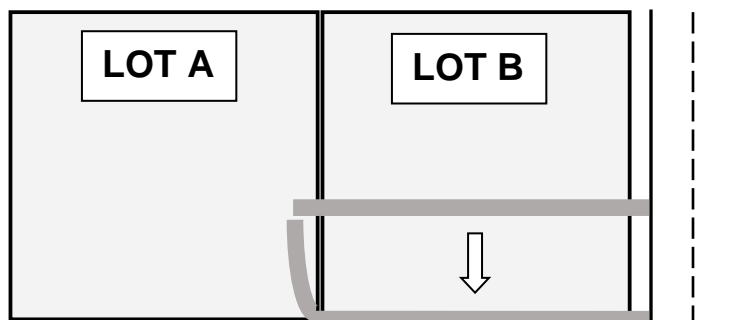
An easement is an interest in real property that gives the easement holder the right to use another person's land. For example, think of two neighboring lots A and B. Lot B is adjacent to a public highway, but Lot A has no access to the road. The owners of the two lots could negotiate an agreement for the owner of Lot A to construct a driveway across Lot B, connecting Lot A to the road. If the agreement is formalized and recorded in public land records, we would say that the owner of Lot A holds an *easement* allowing access to the property via the driveway across Lot B.



An easement like this one is legally tied to the property, not to the current owner. If either lot is transferred to a new owner, Lot A can still be accessed via the easement across Lot B. Thus, easements can endure for many years, even as the character and use of the properties change.

Easement Relocation

Now, consider what could happen if the owner of Lot B wants to develop the property. The easement allowing access to Lot A might restrict the development options. The owner of Lot B might prefer to relocate Lot A's driveway to another part of the property in order to create a larger area for development, as shown here:



In this situation, what rights does the easement holder have?

Under the traditional law of most states, an easement can be relocated only with the consent of both parties – the easement holder and the owner of the property burdened by the easement. But this power can be abused. In our example, the owner of Lot A could prevent the development of Lot B by withholding consent to relocate the driveway, even if the relocation had no major effect on Lot A’s access to the public road. In some cases, easement holders have used this power to demand a payment before consenting to a relocation.

Modernizing the Law

The Uniform Easement Relocation Act (UERA) modifies the rule requiring mutual consent for easement relocation. If the parties cannot agree, the UERA allows the owner of the burdened property (Lot B in our example) to get permission from a court to relocate an easement. The burdened property owner must provide advance notice of the relocation plan to parties who own an interest in the property served by the easement (Lot A), and any of them may object to the relocation in court.

Before the court allows easement relocation, the burdened property owner must show that the relocation would not materially:

- reduce the usefulness of the easement,
- impose a burden on the easement holder,
- impair a purpose for which the easement was created,
- impair the safety of anyone using the easement, or
- reduce the value or condition of the easement holder’s property.

In addition, the burdened property owner must pay all the expenses of relocation and ensure that the easement holder’s access is not disrupted during relocation.

Certain exceptions apply: the UERA does not allow relocation of easements held by public utilities, or easements that restrict development, such as conservation easements and negative easements.

Conclusion

The Uniform Easement Relocation Act corrects an imbalance of power that allows easement holders to unreasonably restrict development of another person’s property. The act provides an alternative procedure for court-ordered easement relocation as a safety valve in case the owners of the properties affected by the easement cannot agree to terms. Enacting the UERA will encourage flexibility and cooperation between property owners and protect the property rights of both easement holders and the owners of land subject to an easement.

Uniform Pretrial Release and Detention Act

The United States has the highest rate of incarceration in the world, with an estimated 2.3 million people currently held in U.S. jails and prisons. Pretrial detention, in which an individual is held in jail pending trial, contributes significantly to the soaring incarceration rate. On any given day, there are nearly half a million individuals in U.S. jails who are charged with crimes but have not yet been tried or convicted. The overwhelming majority of these people, all of whom are presumed to be innocent, are held because they cannot afford money bail.

The Uniform Pretrial Release and Detention Act responds to the need for a broad and balanced statute to guide courts in making pretrial release and detention decisions for the millions of people charged with crimes each year in state courts. The Act provides a comprehensive procedural framework for release and detention determinations.

The Act has three main objectives:

1. To offer a clear, coherent, and workable framework for pretrial release and detention that strikes an appropriate balance between protecting individual liberty and ensuring public safety and the effective administration of justice.
2. To limit restrictions on pretrial liberty to those necessary to meet the state's compelling interests during the pretrial phase.
3. To provide enough flexibility to accommodate variations in state constitutional structures and policy preferences.

Article 2 – Citation and Arrest

Article 2 contains provisions to guide the first interaction between an individual and a law enforcement officer. It offers to states the option of requiring citations instead of arrests in certain circumstances, limiting authority to arrest for certain classes or types of minor offenses. Article 2 outlines the information that the citation must include, and if a court appearance is required, when and where the individual must appear. Experience suggests that presenting this information clearly can help to minimize failures to appear in court.

Article 3 – Release Hearing

Article 3 requires that an arrested individual be brought before a court within 48 hours of arrest for an initial appearance, which the Act calls a “release hearing”. At the release hearing, the court must determine by clear and convincing evidence whether the accused is likely to engage in certain behaviors that would unduly threaten public safety or the administration of justice. If not, the court must release the defendant on recognizance. If the court determines that there is such a likelihood, the court must impose the least restrictive measure available to address the identified risk. As a general matter, the Act prohibits financial conditions of release that the defendant cannot satisfy. In limited circumstances, however, the Act provides for temporary detention or unaffordable bail.

Article 4 – Detention Hearing

The Act anticipates that a small fraction of defendants may present a great enough risk to justify detention until adjudication. For those defendants held temporarily under Article 3, Article 4 provides for a prompt detention hearing and establishes substantive and procedural standards that must be satisfied before the court may issue an order of pretrial detention or an order that otherwise *results* in continued detention, which includes imposing or maintaining an unaffordable bail amount. The detention standards mirror the federal Bail Reform Act of 1984: the court must provide counsel to an indigent defendant, must conduct an adversarial hearing, and cannot impose detention unless it finds by clear and convincing evidence that detention is necessary.

Conclusion

The Uniform Pretrial Release and Detention Act responds to broad bipartisan calls for changes to pretrial detention practice. Existing practices impose profound social costs as well as heavy fiscal burdens for state and local governments. Research suggests that pretrial detention has a negative impact on individuals' economic prospects and increases the likelihood of recidivism. Detained defendants often plead guilty in order to go home with sentences of "time served" - even those who might otherwise be acquitted or have their charges dismissed – because they cannot afford to remain in jail. The Uniform Pretrial Release and Detention Act aspires to remedy these ills, maximizing pretrial liberty for those presumed to be innocent without sacrificing public safety.

Uniform Public Expression Protection Act

The Uniform Public Expression Protection Act is designed to prevent an abusive type of litigation called a "SLAPP," or "strategic lawsuit against public participation." A SLAPP may be filed as a defamation, invasion of privacy, nuisance, or other type of claim, but its real purpose is to silence and intimidate the defendant from engaging in constitutionally protected activities, such as free speech. The uniform act contains a clear framework for the efficient review and dismissal of SLAPPs. Below is a summary of how the motion procedure operates under the uniform act.

Phase 1 – Filing of the Motion and Scope of the Act

First, the party targeted by the SLAPP files a motion for expedited relief under Section 3 of the uniform act. The filing of the motion stays, or freezes, all proceedings between the moving party and responding party (unless the court grants specific relief from the stay) until the court rules on the motion. The moving party must file the motion within 60 days after being served with a complaint, crossclaim, counterclaim, or other pleading that asserts a cause of action to which the Act applies. Section 2 of the Act explains that the Act applies if the cause of action asserted against a person is based on the person's:

1. Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
2. Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
3. Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the State constitution, on a matter of public concern.

Section 2(c) provides exemptions from the scope of the Act; the Act does not apply to a cause of action asserted:

1. Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
2. By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
3. Against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

Once the motion is filed, the responding party may argue that the action does not fall within the scope of the Act. If the court finds that the action is not within the scope, the moving party loses the motion and may appeal immediately. However, if the court finds the action is within the scope, then the parties move to the second phase of the motion process.

Phase 2 – Prima Facie Viability

In this phase, the responding party must show that the cause of action states a prima facie case as to each essential element of the claim. In short, the responding party must provide evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted. If the respondent cannot establish a prima facie case, then the court must grant the motion and the cause of action (or portion of the cause of action) must be dismissed. If the responding party does establish a prima facie case, then the court moves to phase three of the motion procedure.

Phase 3 – Legal Viability

In this phase, the burden shifts back to the moving party to either show that:

1. The responding party failed to state a cause of action upon which relief can be granted; or

2. There is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

If the moving party meets this burden, then the moving party wins, and the cause of action is stricken with prejudice (Section 7). The responding party may appeal at the conclusion of the case. If the moving party fails to meet its burden (the court finds the responding party's case to be viable as a matter of law), then the moving party will lose the motion and may appeal immediately (Section 9).

Costs, Attorney's Fees, and Expenses

Section 10 of the Act states that if the moving party wins on the motion, then the court must award it costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion. If the responding party wins and the court finds that the SLAPP motion was frivolous or filed solely with intent to delay the proceeding, then the responding party will get its costs, fees, and expenses.

The Uniform Public Expression Protection Act offers to enacting states a comprehensive, efficient framework for the resolution of SLAPPs. The Act's broad scope also provides more protection to citizens than most existing anti-SLAPP statutes.